* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **FAO No. 481/2011 & FAO No.482/2011**

% **20th April, 2012**

1. FAO 481/2011

VINOD TIHARA & ORS ..... Appellants

Through: Mr. Parag Tripathi, Sr. Adv. with
Mr. Arun Bhardwaj, Sr. Adv. and
Mr. Gautam Dutta &
Mr. Jayant Mohan, Advs.
for the appellants.
Mr. D.S.Narula, Sr. Adv. with
Mr. Ramesh Kumar, Adv. for
Sarojini Nagar Gymkhana Ltd.

versus

DELHI & DISTRICT CRICKET ASSOCIATION ..... Respondent

Through: Mr. Maninder Singh, Sr. Adv. with
Mr. J.S. Bakshi, Adv.,
Ms. Sunita Tiwari, &
Mr. S.M.Sinha, Advs. for DDCA.
Mr. Harish Malhotra, Sr. Adv. with
Mr. Tanuj Khurana, Adv. for R.31- 32

AND

2. FAO 482/2011

ASHOKA CRICKET CLUB & ORS ..... Appellants

Through: Mr. Parag Tripathi, Sr. Adv. with
Mr. Arun Bhardwaj, Sr. Adv. and
Mr. Gautam Dutta &
Mr. Jayant Mohan, Advs.

Versus

DELHI & DISTRICT CRICKET ASSOCIATION ..... Respondent

Through: Mr. Maninder Singh, Sr. Adv. with
Mr. J.S. Bakshi, Adv.,
Ms. Sunita Tiwari, &
Mr. S.M.Sinha, Advs. for DDCA.
Mr. Rakesh Chaudhary, Adv.
for applicant in CM No.400/2012.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? Yes.

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of these appeals filed under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 (CPC) is to the impugned orders of the Trial Court dated 9.11.2011 dismissing the application for interim injunction filed by the appellants/plaintiffs under order 39 Rule 1 & 2 CPC.

2. The disputes in the present case centre around the election to Sports Working Committee of the Delhi District and Cricket Association (DDCA). Sports Working Committee is a smaller body within the DDCA's Executive Committee.

3. DDCA is an association which is registered as a company under Section 25 of the Companies Act, 1956. DDCA is governed by its Memorandum and Articles of Association which have been approved by the Central Government. As per the license granted by the Central Government for registration of DDCA under Section 25 of the Companies Act, 1956, there cannot be any alteration of the Memorandum and Articles of Association of DDCA unless the alterations have been previously submitted to and approved by the Central Government. This is contained in para 4 (vii) of the Memorandum of Association of DDCA. I may note that the Central Government in terms of Section 25(5) is entitled to impose necessary conditions when granting permission to the Association to be registered under Section 25.

4. It is necessary before proceeding to understand the necessary facts and the issues at hand that reference is made to certain legal provisions as also the applicable Rules of the DDCA. The legal provisions which are required to be noted are those of the Companies Act, 1956, as also the General Clauses Act, 1897. So far as the Companies Act, 1956 is concerned, the provisions which are required to be referred to are Sections 25(1), (4), (5) and (8) (a) to (d). The relevant provision of General Clauses

Act, 1897 is Section 3(42) which defines a "person". The relevant Rules of the DDCA are Clause 4(vii) and Rules 21 to 23 of the Memorandum and Articles of Association of DDCA Rules and Regulations**.** The aforesaid provisions of law and the Rules and Regulations of DDCA read as under:

> **"<u>Provisions of the Companies Act, 1956</u>**
>
> 25. Power to dispense with "Limited" in name of charitable or other company.
>
> (1) Where it is proved to the satisfaction of the Central Government that an association—
>
> (a) is about to be formed as a limited company for promoting commerce, art, science, religion, charity or any other useful object, and
>
> (b) intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members,
>
> The Central Government may by licence, direct that the association may be registered as a company with limited liability, without the addition to its name of the word "Limited" or the words "Private Limited".
> (2)……..
> (3).…….
>
> (4) A firm may be a member of any association or company licensed under this section, but on the dissolution of the firm, its membership of the association or company shall cease.
>
> (5) A licence may be granted by the Central Government under this section on such conditions and subject to such regulations as it thinks fit, and those conditions and regulations shall be binding on the body to which the licence is granted, and where the grant is under sub-section (1), shall, if the Central Government so directs,

be inserted in the memorandum, or in the articles, or partly in the one and partly in the other.
(6)…….
(7)…….

(8) (a) A body in respect of which a licence under this section is in force shall not alter the provisions of its memorandum with respect to its objects except with the previous approval of the Central Government signified in writing.

(b) The Central Government may revoke the licence of such a body if it contravenes the provisions of clause (a).

(c) In according the approval referred to in clause (a), the Central Government may vary the licence by making it subject to such conditions and regulations as that Government thinks fit, in lieu of, or in addition to, the conditions and regulations, if any, to which the licence was formerly subject.

(d) Where the alteration proposed in the provisions of the memorandum of a body under this sub-section is with respect to the objects of the body so far as may be required to enable it to do any of the things specified in clauses (a) to (g) of sub-section (1) of section 17, the provisions of this sub-section shall be in addition to, and not in derogation of, the provisions of that section.]"

Section 3(42) of the General Clauses Act, 1897

"Person" shall include any company or association or body of individuals, whether incorporated or not;

Rules 21 to 23 of the Articles of Association of DDCA
Affiliated Clubs

21. Any club from the area controlled by the Association whose objects are similar to those of this Association or is forced to promote the game of Cricket, may apply for affiliation to the Executive Committee on the prescribed from giving list of its members alongwith a copy of its constitution, accompanied by affiliation fee as prescribed from time to time for the year. Any Club or Association when affiliated may become to use of Association's grounds and other amenities with the prior approval of the Executive Committee that may be granted to such affiliations bodies.

22. The affiliation of such a club or Association may withdraw by the Executive Committee.

23. (a) The executive committee will form a sports working committee consisting of 10 members who shall be elected by the affiliated clubs amongst the members nominated by the affiliated clubs.

The term of the sports working committee will be of a minimum of one year which may be extended to a maximum of two years at a time by the Executive committee.

(b) The election of the members of sports working committee as specified in clause 23(a) shall be held in such manner as may be prescribed by the Executive Committee in this behalf.

Clause 4(vii) of the Memorandum and Articles of Association of DDCA

4 (vii) That no alteration shall be made to the Memorandum of Association or to the Articles of Association of the Company, which are for the time being in force, unless the alterations have been positively submitted to and approved by the Central Government.**"**

5. Reference to the aforesaid provisions of law and the Rules and Regulations of DDCA brings out the following salient points:-

i) The Central Government while giving license is entitled to put appropriate terms and conditions on association, which is granted and incorporated under Section 25, by virtue of sub-Section 5 of Section 25 and one of the conditions is Clause 4(vii) as contained in the Memorandum of Association of DDCA that there shall be no alterations of the Memorandum or Articles unless the alterations have

been previously submitted to and approved by the Central Government.

ii) Sub-Section 4 of Section 25 permits even a firm to be a member of a company which is licensed under Section 25 meaning thereby member of a company which is incorporated under Section 25 need not be a legal entity, a partnership firm is not a legal entity. Section 3(42) of the General Clauses Act, 1897 which defines a person also does not require a person to be a legal entity, inasmuch as, a person includes an association or body of individuals whether incorporated or not.

iii) As to when a club can be a member of DDCA i.e. a club can be an affiliated club in terms of Rules 21 to 23 of the Memorandum and Articles of Association of DDCA, one can say that there is no requirement in the Memorandum/Articles of a club having to be only a registered club and nor is there a definition of a club that a club can only mean a registered club. Obviously, this position is in furtherance of the provisions of Section 25(5) of the Companies Act, 1956 and Section 3(42) of the General Clauses Act, 1897.

iv) The Sports Working Committee is elected and has a term of only one year i.e. every year a fresh Sports Working Committee is elected. At certain times it is possible that the term in a particular case may be extended to two years, however, the two years period is the maximum permissible term of the elected Sports Working committee.

6. It is common ground between the parties to this litigation that the ten candidates who fetch the maximum number of votes polled get elected, i.e. a total of first 10 persons who *in seriatim* get the maximum number of votes would stand elected to the Sports Working Committee out of all the candidates who contest the elections.

7. The disputes which have arisen in the present litigation so far as the election to the Sports Working Committee for the relevant year 2011-12 are concerned, are not the disputes which have arisen for the first time. They had also arisen about 4 years or so earlier and which had resulted in litigation. Such aspects I will refer to at an appropriate stage in this judgment. The only dispute is as to whether only a registered club, i.e. a club which is registered under the Societies Registration Act, 1860 can be an affiliated club under Rules 21 to 23 of the Articles of Association. Putting it

differently, DDCA contends that a club which is not a registered club cannot become an affiliated club in terms of Rules 21 to 23 of the Articles of Association and therefore cannot vote and nor its nominee can be a candidate in the elections of the Sports Working Committee.

8. The subject suits were filed by unregistered clubs, and from the impugned orders in these suits, the present appeals arise. In the subject suits the basic thrust/cause of action as also the reliefs claimed are that DDCA is wrongly disallowing unregistered clubs to participate in the elections and is not allowing the nominees of the unregistered clubs to vote or contest the elections.

9. Trial Court has dismissed the injunction application by making the following observations:-

> "Argument advanced on behalf of the parties on the Application of the Plaintiff under Order 39 Rule 1 & 2 read with Section 151 CPC have been heard. The Application has also been gone through.
>
> During the course of his submissions Learned Counsel for the Applicant/Plaintiffs has prayed for passing interim order against the Defendant from declaring elections amongst registered clubs only as in also clearly prayed in the Application in hand.
>
> In the course of his submission Learned Counsel for the Defendant No.1 has submitted that the relief prayed for cannot be granted as the same has already become infractuous in view of notification dated 30.10.2011 declaring schedule of election in

compliance to the directions of Hon'ble High Court of Delhi dated 19.10.2011 in CM(M) No. 842/11.

It is pertinent to note that the Suit has been Instituted by the Plaintiff on 31.10.11 seeking restraint order against the Defendants for holding election. The preliminary hearing in the matter had taken place on 31.10.11 itself and on the said date no ex-parte injunction was granted against any of the Defendant.

It is only on 2.11.2011 that Sh. J.S.Bakshi Learned Counsel for Defendant appeared in this case and placed on record his vakalatnama. On the said date the matter was listed for 3.11.2011 but the said date was instantly changed to 4.11.2011 the presiding officer of the Learned Transferor Court was on leave and so the matter was kept for 5.11.2011. Vide orders dated 4.11.2011 of the Ld. District and Sessions Judge, Delhi the proceeding of the case before the Learned Transferor Court were stayed and therefore the Ld. Transferor Court adjourned to same for 11.11.2011. It is in the meantime that on than on transfer Application of defendant No.1 that this case has been transferred to the Court for today i.e 9.11.2011 for urgent hearing on the Misc. Application.

It is apparent from the record of this case that even before the Institution of this case on 30.10.11 Sh. Kuldeep Singh Election Officer declared elections on 30.10.2011 giving complete schedule of the election in compliance to the order of the Hon'ble High Court of Delhi dated 19.10.2011 in CM (M) No. 742/11.

In these circumstances neither prima facie case nor likelihood of irreparable loss and injury nor the balance of convenience are in favour of the Applicants/plaintiff and therefore application in hand under Order 39 Rule 1 & 2 read with Section 151 CPC is hereby dismissed. It has virtually become infructuous."

10. A reading of the aforesaid observations shows that the basic reason for declining of the injunction is that the election process has started and which election process should be allowed to go on and accordingly there can be no injunction against the holding of the elections.

11. A learned single Judge of this court after hearing counsel for the parties vide order dated 15.11.2011 permitted unregistered clubs to vote and participate in the election, of course subject to further orders of the Court, and the said order reads as under:

> "Caveat Nos.1011-12/2011
>
> Since there is due representation on behalf of the Respondent, notice of Caveat stands discharged.
>
> Applications stand disposed of.
>
> CM Nos.20534-36/2011
>
> Allowed, subject to all just exceptions.
>
> FAO Nos.481-482/2011 and CM Nos.20533-35/2011
>
> By way of the present two Appeals, challenge has been made by the appellants to the common order dated 9.11.2011 whereby the interim application for injunction under Order XXXIX Rules 1 and 2 filed by the appellants was dismissed. Feeling aggrieved with the same, the appellants have approached this Court.
>
> Both these appeals have been strongly opposed by learned counsel representing the respondents through Mr. Maninder Singh and Mr. Sandeep Sethi, learned senior counsel assisted by Mr. J.S. Bakhi and Ms. Sunita Tiwari. A number of objections have been raised by the counsel - legal, factual and technical. Learned counsel have also taken the plea that the present appeals have not even been filed by all the appellants and there is no proper attorney executed by the appellants in favour of the attorney holders. Learned counsel have also taken the objection that in the interim application moved by the appellants before the learned Trial Court, no prayer was made by them to seek their participation in the election and their specific prayer was only to seek stay of the said election which were directed by the orders passed in one civil suit and then by this Court. Learned counsel have also taken an objection that these appeals are also barred on account of unexplained delay and laches on the part of the appellants as the Notification, through which the election was notified, was issued by the Election Officer on 30.10.2011, while both the injunction

suits were filed by the appellants on 31.10.2011. Learned counsel have also urged that the Election Officer has duly invited the objections before finally declaring the schedule of the election and all these appellants were well aware of the fact that being unregistered clubs, they were rendered ineligible to participate in the elections to elect the Sports Working Committee of the respondent. Mr. Sandeep Sethi, learned senior counsel representing the respondent in FAO No.482/2011 has taken an objection that some of these appellants have been rejected not only because they are unregistered clubs, but because of certain other disputes and, therefore, this is not the stage to go into the said issues which were validly decided by the Election Officer.

Dr. A.M. Singhvi, Senior Counsel and Mr. Rakesh Tiku, Senior Counsel, on the other hand, have taken the plea that if the appellants are not permitted to file their nominations or participate in the election process, then they will be left remediless, making the position irreversible and irreparable. Learned counsel also submits that in any case the appellants are not seeking stay of the elections and are only claiming parity vis-?-vis two other clubs who have been permitted to participate in the election process by the learned Trial Court and also by this Court vide order dated 24.10.2011 passed in RFA 529/2011 and, therefore, the present appellants, being on an equal footing, are also entitled to participate in the election process.

Taking a prima facie view of the matter, this Court is of the view that the various pleas raised by both the parties require detailed consideration, and at this stage this Court is not inclined to take any conclusive view of the same.

Notice.

Counsel for the respondent accepts notice.Reply be filed within a period of three days from today. Rejoinder, if any, be filed by the appellants within a period of three days thereafter.

List the appeals for arguments on 13.12.2011. In the meanwhile, the appellants are permitted to participate in the election process and it is made clear that the participation of the appellants in the election process, including filing of their nominations etc., shall be subject to the final outcome of the present appeals. It is further directed that the respondents shall not declare the results till the next date and the same shall be kept in a Sealed Cover and produced in the Court for further directions.

A copy of this order be given DASTI under the signature of Court Master."

12. An order dated 25.11.2011 was thereafter passed clarifying the position by observing as under :-

> "CM No. 21385/2011
>
> Allowed subject to all just exceptions.
>
> CM. 21384/2011
>
> By this application filed under Section 151 CPC the applicant/appellant seeks directions to direct the Election Officer to include its name in the voter list and after inclusion of its name, allow it to participate in the election process in terms of the order dated 15.11.2011 passed by this court.
>
> Mr. Rakesh Tikku, learned Senior Advocate appearing for the applicant submits that the name of the applicant was not included in the voter list of the respondent. Counsel further submits that vide order dated 15.11.2011, this court directed the applicant to participate in the election process and had given him the right to file his nominations etc.
>
> I have heard learned counsel for the parties.
>
> This court is not concerned with the inter se rivalry of the club with regard to who is the right person to cast vote on behalf of the Lal Bahadur Shastri Club. Certainly, the rights of the appellant clubs were in lurch due to which these appeals were filed and vide order dated 15.11.2011, these clubs were given the right to participate in the election process which included the applicant as well. The order restored the rights of the clubs to vote and now due to a subsequent act by the said club, the right in any manner cannot be taken away. Therefore, let the name of the applicant be restored in the voter list of the respondent. So far the question who is the right person to cast vote on behalf of the said club is concerned, the same shall be decided by the Election Officer.
>
> With the aforesaid directions, the present application stands disposed of.
>
> FAO No. 481/2011
>
> List the matter on 13.12.2011, as already fixed.
>
> DASTI under the signature of Court Master."

13. Thereafter, election was held and the results of the election were kept in a sealed cover. In order to appreciate the conclusion of the election and for further orders being passed, vide order of this Court dated 13.12.2011 in FAO No.482/2011, the following order was passed:-

> **"CM No.20536/2011**
>
> Exemption allowed subject to just exceptions.
> Application stands disposed of.
>
> **+ FAO No.482/2011 and C.M. No.20535/2011**
>
> 1. By an interim order dated 15.11.2011, it was ordered by a learned Single Judge of this Court that the appellants are allowed to participate in the election process, however, their participation in the election process, including filing of the nomination etc, shall be subject to final outcome of the present appeal. It was also directed that respondent shall not declare the results of the election which shall be kept in a sealed cover and produced in the Court for further directions.
>
> 2. The disputes in the present case pertain to elections of the Sports Working Committee of the respondent/Delhi & District Cricket Association. The disputes pertain to rights of various clubs, including unregistered clubs, to participate in the election process.
>
> 3. In any election process, it is necessary to know the final voting pattern and the results in order to decide the necessity of continuing with the election disputes. This I say so because the voting pattern may render the rights which are claimed by some members of the stated Electoral College, either valid or unnecessary to be determined. Aspects as to whether the voting of clubs in question can affect the result and finality of election, can only be known from the voting pattern, the difference/margin of victory and other related aspects. Therefore there is no need of keeping such results in a sealed cover or secret, but in fact such results must be known to the parties for knowing the futility or any further requirement of continuing of the disputes with respect to election process. The purpose of a suit and appeal such as the present would be considerably served if the results are declared,

but the same are not implemented.

4. Accordingly, I direct the Election Officer to declare the election's results of the Sports Working Committee of the respondent which was held on 27.11.2011. The results so declared will be made public and be informed by means of pasting on the notice board of respondent. The election results will contain detailed results including with respect to votes which are polled by each candidate and the margin of victory of the candidate.

5. This election report besides being pasted on the notice board of respondent be filed in this Court. The Election Officer, if it is so available, will not declare as to which voter has voted for which candidate, however, this aspect will be filed in this Court in a sealed cover so that the Court can peruse the same in order to decide the requirement of continuing with the present litigation.

6. I am informed that counting of votes has yet to take place. The Election Officer will follow the due process as required and carry into effect the exercise of counting of votes and declaring the results. The Election Officer can commence the process of counting the votes and declaring of results on 7.1.2012 at 11.00 A.M. The process with respect to counting of votes and declaring of results can go on any subsequent date, if so required. It is once again clarified that the results when declared would not be implemented without permission of the Court.

7. It is agreed by the counsel for the parties that during counting of votes and the process with respect to declaration of results of the election, all the candidates and/or two representatives of each of such candidates, if they so want, will be allowed to be present. It is directed that none of the parties will cause, in any manner, obstruction to the counting of the votes and declaration of the results, and if the Election Officer reports any such wrongdoing of any of the parties, the same would be viewed extremely seriously by this Court.

8. Counsel for the parties also agree that this matter can be listed in the last week of January, 2012 for further consideration. Counsel for the respective parties are directed to file a short synopsis not exceeding four pages giving the broad heads of their arguments. Obviously, these synopsis will be prepared keeping in view the results as declared by the Election Officer. It is agreed between the parties that if the results of the election do not warrant filing of the written synopsis inasmuch as disputes may have been taken to have been settled or rendered inconsequential, then, no such synopsis need to be filed, however,

a note can be filed as to why the case need not be decided on merits as the same would be infructuous/inconsequential/unnecessary. The present order is without prejudice to the respective rights and contentions of the parties.

9. List for further directions on 27th January, 2012.

10. A copy of this order be given dasti to the counsel for the parties for being served upon the Election Officer.

C.M. No.21834/2011

At request, adjourned to 27th January, 2012."

14. Therefore, in terms of the order dated 13.12.2011 the results of the election were to be announced, but they were not to be implemented. The results of the election were accordingly announced and which show the following position of voting qua the contesting candidates:-

S.No.	Name	Votes
1.	Ajit Singh Madhok	70
2.	Naresh Sharma	65
3.	Vinod Tihara	65
4.	Vijay Bahadur Mishra	62
5.	P.S. Chauhan	60
6.	Ashok Kumar Katyal	58
7.	Surya Prakash Sharma	58
8.	Anil Kumar Chaudhary	54
9.	Pradeep Gupta	54
10.	Anil Kumar Passi	52
11.	Ashok Sharma	51

12.	Devender Choudhary	50
13.	Dr. Ahmed Tamim	50
14.	Pradeep Aggarwal	50
15.	Ramesh Sachdeva	49
16.	Lalit Sharma	47
17.	Amrinder Singh	46
18.	Praveen Kumar Soni	46
19.	Narender Kumar Sharma	45
20.	Vinod Sharma	44
21.	Pradeep Jagota	2

The first ten candidates are thus the successful candidates.

15. I may note that none of the losing candidates have filed any application before me nor are said to have filed any suit to challenge the results of the election. The challenge is only by DDCA on various counts which I will be dealing with hereinafter.

16. The following are the issues which have to be decided in these appeals, and which have been so argued on behalf of counsel for the parties:

I) Whether an unregistered club can participate in the elections of the Sports Working Committee by casting its vote or by nominating a person to contest the elections.

II) Related with the aforesaid issue is the case of the DDCA that the unregistered club cannot be allowed to participate in the election process in view of a stated resolution dated 1.3.2007 of DDCA. Of course, it would be a moot point which I will deal with in this judgment whether at all this resolution dated 1.3.2007 is of any body of the DDCA, i.e. whether of the Executive Committee or whether of the Sports Working Committee.

III) Whether Rule 23(b) of the Rules and Regulations of DDCA permits DDCA to put a term thereby excluding unregistered clubs from the election process.

IV) Whether the candidates who are Government servants cannot contest the elections in view of the Rule 15 of the CCS(Conduct) Rules, 1964 inasmuch as, no prior sanction was taken from the Central Government by the concerned candidates before participating in the elections.

17. I have already reproduced the relevant statutory provisions, Clauses of Memorandum of Association of DDCA as also the Rules and Regulations of DDCA. I am of the opinion that the appeals deserve to be allowed and the interim order of a learned single Judge of this Court dated 15.11.2011 is liable to be confirmed. The results of the election to the Sports Working Committee which was held on 27.11.2011 are also liable to be implemented.

18. In my opinion, the DDCA is totally unjustified in requiring or contending that it is only a registered club which can become an affiliated club under Rules 21 to 23 of the Rules and Regulations of DDCA and only such registered club can participate in the election process. Firstly, there is no requirement in law of a club to be a legal entity as is being contended on behalf of DDCA. A person is defined in the Section 3(42) of the General Clauses Act, 1897 to include an unregistered association or an un-incorporated association. Therefore, it is impermissible for DDCA to contend that unless the body is a registered club it could not become an affiliated club in terms of Rules 21 to 23 of DDCA. In fact, the argument of DDCA, in my opinion, is really an argument of desperation because DDCA came into existence over 40 years back, and for all these 40 years, the

unregistered clubs have very much been participating in the elections to the Sports Working Committee by casting their votes or sending their nominees for elections to the Sports Working Committee. Also, any doubt that only a legal entity can be an affiliated club is removed when we refer to sub-Section 4 of Section 25 of the Companies Act, 1956 as per which a partnership firm can also be a member of a company. Though, of course Section 3(42) of the General Clauses Act, 1897 in itself is enough, but the position becomes further crystal clear qua incorporated associations in view of Section 25, inasmuch as under sub-Section 4 of Section 25 even a partnership firm can be a member of a company incorporated under Section 25, and surely, a partnership firm is not a legal entity; being only an association of individuals. Once a partnership firm can be a member of an incorporated association under Section 25, I do not think that the contention of the DDCA is correct that only such clubs which are registered under the Societies Registration Act, 1860 can become an affiliated member of DDCA. The rationale which was given by the DDCA in requiring a club to be a registered club is that in certain clubs there were disputes of succession and if the clubs are registered, DDCA will not be faced with such disputes. Mere registration, I am sure, will not stop any disputes with regard to the

representation of the clubs inasmuch as even in registered clubs there are always disputes as to who will represent the registered club whether by election or as per the Rules, and therefore, such attempt to justify that the stand of DDCA is justified, in my opinion, really is an argument which has no legs to stand upon. Therefore, whether a registered club or unregistered club, surely DDCA can always say that in cases where there are disputes as to the representation of a registered or unregistered club, the concerned persons should approach the Civil Court and get appropriate orders that who should represent such registered or unregistered clubs.

19. Now let me turn to the issue as to whether there is a resolution passed by DDCA on 1.3.2007 in terms of which only registered clubs can participate in the elections to the Sports Working committee. Related to this aspect will be the bindingness between the parties of a judgment of Sh.K.S.Mohi, ADJ dated 12.4.2007, as per which, it was ordered that only registered clubs will participate in the election process.

I am indeed surprised at the so-called 'resolution' dated 1.3.2007 copy of which has been filed before me. Except being a typed copy of one page, this 'resolution' does not show which body has passed it. There is no mention of whether this resolution has been passed by the

Executive Committee of the DDCA or by the Sports Working Committee of the DDCA. There are no signatures whatsoever which are appearing on this resolution, and who were the persons who passed this resolution and in which capacity, is not mentioned . Even after putting counsel for DDCA to notice on these aspects on 16.4.2012 and 17.4.2012, nothing has been done. In my opinion, therefore, there is no valid resolution of any competent body in DDCA as per which only registered clubs should be allowed to participate in the election process. Further, in my opinion, in fact there cannot be a resolution of any body in the DDCA by which it can ask that an affiliated club can only be an affiliated club if it is a registered club inasmuch as, a club is not defined in the Memorandum and Articles of the Association of DDCA and therefore to restrict the expression "club" to a registered club will in fact amount to alteration of the Memorandum and Articles of Association of DDCA, and which cannot be done by DDCA without any prior sanction/approval of the Central Government and which is necessary as per the terms of its license and as contained in Clause 4(vii) of the Memorandum of Association.

20. The argument on behalf of DDCA that as per Rule 23(b) once there is an entitlement to determine the manner in which elections can be

held by the Executive Committee for the Sports Working Committee, and consequently the Executive Committee can prescribe the requirement for registration, is an argument if accepted will amount to permitting DDCA to do indirectly what cannot be done directly. As there is no restriction in the existing Memorandum and Rules of DDCA for requiring a club to be a registered club and therefore, if DDCA takes up a stand that only registered club can be an affiliated member, it would require amendment to the Memorandum and the Rules of DDCA and which amendment even assuming if it is carried out by resolution dated 1.3.2007 cannot be looked into as admittedly there is no prior sanction/approval of the Central Government to the amendment of the Memorandum and Rules of the DDCA whereby the definition of a club is introduced that only a registered club can be an affiliated club.

21. Now let me examine issue as to whether the order of Sh. K.S. Mohi, ADJ passed on 12.4.2007 is binding on the appellants/plaintiffs/unregistered clubs and whether it is permissible for DDCA to contend that the said order dated 12.4.2007 binds the appellants/plaintiffs/unregistered clubs. In my opinion, this argument on behalf of DDCA is clearly misconceived, inasmuch as, admittedly the

appellants/plaintiffs/unregistered clubs were not parties to the litigation in which the order dated 12.4.2007 was passed. It is trite that a judgment only binds the parties to the suits and persons who claim thereunder. The judgment dated 12.4.2007 cannot be read to be a judgment in rem for obvious reasons that it is not in exercise of matrimonial, probate or admiralty etc. jurisdiction. I am informed that not a single unregistered club was a party to the litigation which resulted in passing of the order dated 12.4.2007 by Sh.K.S. Mohi, ADJ. The order of Sh. K.S.Mohi basically implements the resolution of DDCA dated 1.3.2007 and on which aspect I have already commented above that there is absolutely no resolution whatsoever dated 1.3.2007 and if even there is such a resolution, the same will be an illegal resolution because the same amounts to an amendment of the Memorandum of Association or Rules without prior sanction/approval of the Central Government as required under Section 25 of the Companies Act, 1956, the license granted to the DDCA and as duly incorporated in Clause 4(vii) of the Memorandum of Association.

Therefore, the order dated 12.4.2007 cannot bind the appellants/plaintiffs either on principle of *res judicata* or because there is no resolution dated 1.3.2007 of DDCA on which the order was passed, or on

the ground even if there is a resolution dated 1.3.2007, the said resolution would be an illegal resolution in the absence of any prior sanction or approval from the Central Government.

22. A very feeble attempt was made on behalf of the DDCA to argue that the judgment dated 12.4.2007 binds the appellants/plaintiffs by reference to Section 11 Explanation VI CPC which provides that where persons litigate *bonafide* in respect of a public right or a private right claimed in common for themselves and others, all persons interested in such right shall be deemed to claim under the persons so litigating. I really fail to understand how can this Explanation VI to Section 11 CPC at all apply because the purpose of this Explanation is only to bind the persons who claim through the persons who were parties to the earlier suit (i.e. before Sh. K.S. Mohi, ADJ in this case), and as already stated above, none of the unregistered clubs were parties to the suit before Sh.K.S.Mohi, ADJ, and therefore, it cannot be said that the unregistered clubs are claiming through any of the parties in the suit before Sh.K.S.Mohi, ADJ who passed the order dated 12.4.2007. Further, the only other manner in which the judgment of Sh.K.S.Mohi, ADJ dated 12.4.2007 could at all have been binding upon the appellants/plaintiffs/unregistered clubs was only if the provisions of Order 1

Rule 8 CPC were followed in the said litigation whereby to those unregistered clubs which were not made parties, a general notice was issued to appear and contest in those proceedings. Admittedly, and this position is not disputed by the DDCA, that the provisions of Order 1 Rule 8 CPC were not followed before passing the judgment by Sh.K.S.Mohi, ADJ on 12.4.2007. Therefore, in my opinion, DDCA is completely unjustified in relying upon the resolution dated 1.3.2007 and the judgment of Sh.K.S.Mohi, ADJ dated 12.4.2007 to argue and canvass that only a registered club can be allowed to participate in election process.

23. Finally on this aspect of the judgment of Sh. K.S. Mohi, ADJ, I may observe that it is very surprising to note that on the one hand DDCA relies upon the bindingness and finality of the judgment dated 12.4.2007 of Sh.K.S.Mohi, ADJ to contend that unregistered clubs should not be allowed to participate in the election process, however, as many as three elections have taken place subsequent to the judgment of Sh. K.S. Mohi, ADJ, and in none of the three elections after passing of the order of Sh.K.S.Mohi, ADJ on 12.4.2007 were the unregistered clubs barred from participating in the election process. In fact unregistered clubs participated in the election process, voted and their candidates contested the elections and succeeded.

24. Now I proceed to the final issue of the application of Rule 15 of the CCS(Conduct) Rules, 1964. In this regard, the DDCA has filed in this Court and relied upon a circular of the Central Government dated 22.4.1994 as per which the relevant provision of CCS(Conduct) Rules has been reiterated. The said circular dated 22.4.1994 and the Rule 15 read as under:-

> "The Central Civil Services (Conduct) Rues, 1964
>
> 15. Private Trade or Employment:
>
> (1) Subject to the provisions of sub-rule (2), no Government servant shall, except with the previous sanction of the Government-
>
> (a) engage directly or indirectly in any trade or business, or
>
> (b) negotiate for, or undertake, any other employment, or
>
> (c) hold an elective office, or canvass for a candidate or candidates for an elective office, in any body, whether incorporated or not, or
>
> Circular dated 22.4.1994
>
> 16) Rule 15-Contesting in elections to sports bodies etc.
>
> As the Ministries/Departments are aware, previous sanction of the Government in required as per Rule 15(1) of the CCS (Conduct) Rules, 1964 for a Government servant to hold an elective office or canvass for a candidate or candidates for an elective office, in any body whether incorporated or not. Under Rule 12 of the CCS (Conduct) Rules, previous sanction of the Government or the prescribed authority is also necessary for a Government servant associating himself with raising of any funds or other collections in pursuance of any object whatsoever. It hardly needs to be emphasized that the entire time of the Government servant, particularly a senior officer, should be available to the Government and no activities unconnected with his official duties should be allowed to interfere with the efficient discharge of such

> duties. The need for curbing the tendency on the part of a Government servant to seek elective office in sports federations/associations at the national/state level has been considered carefully and it has been decided that the following principles should be followed while considering requests from Government servants for seeking election to or holding elective offices in sports federations/associations:-
>
> (i) No Government servant should be allowed to hold elective office in any sports association/federation for a term of more than 4 years, or for one term whichever is less.
>
> (ii) While seeking office (for which prior permission of Government should be obtained) or supporting the candidature of any person for election to sports bodies, a Government servant should not indulge in conduct unbecoming of a Government servant.
>
> (iii) A Government servant must refrain from raising of funds or other collections from official as well as non-official sources for the promotion of sports at any level.
>
> (iv) Prior clearance from the Government of India must be obtained for any travels abroad in connection with the work or other activities of any sports federation/association. While seeking such clearance, the officer must indicate the source of funding for the foreign trip including travel, hospitality and other expenses and when permitted to go, he must do so by availing of leave due and admissible to him."

25. Of course, it is clear in this case that there is indeed a violation of Rule 15 of CCS(Conduct) Rules, 1964 on behalf of certain candidates who are said to be Government servants. These are the successful candidates no. 4 to 10 in the list which has been reproduced in the earlier part of this judgment. The issue before me is that whether the election should be countermanded because the Government servants have not taken

the requisite permission which was required under Rule 15 and as clarified by the circular dated 22.04.1994.

26. I have thought long and hard on this issue. On the one hand, admittedly there is no prior sanction of the Central Government with respect to the candidates no. 4 to 10 to participate in the election process, however, I may note that the concerned Rule and the circular do not put a total embargo on the Government servants from contesting the elections. Rules are of two types; one Rule is where there is a complete embargo on contesting of elections and other is that prior permission has to be taken. In the present case though prior permission has not been taken, I do not feel that for this reason itself the election results should be set aside and it should be held that the unregistered clubs whose nominees are such persons, should be held unable to function as members of the Sports Working Committee, inasmuch as, if there is a violation of Rule 15 of the CCS(Conduct) Rules or any circular of the Government, the Government will take necessary action against such persons assuming there is such violation. Also, it is possible in certain cases the Government may give ex post facto sanction. However, the mere fact that Rule 15 is violated would not mean that elections are automatically to be set aside. Taking of action by the Government is one

thing and legality of the elections is another. In this regard I am also guided by the fact that the elections in this case is to a body called the Sports Working Committee, and the term of such Sports Working Committee is just of one year. Therefore, I do not feel that I must interpret the relevant Rule 15 of the concerned circular so as to negate the results of the elections. Holding that the violation of Rule 15 cannot result in declaring bad result of elections qua such persons who are Government candidates I leave it open to the DDCA to bring notice of this fact to the concerned authority and in the meanwhile if it is permissible, for the concerned candidates to apply to the Government to get the necessary ex post facto permission, if the same is necessary.

27. I may at this stage state that counsel for the unregistered clubs state that with respect to all the candidates who are Central Government servants and who participated in the elections, the necessary sanction letters have been duly given to the Election Officer and who has examined this issue before allowing such persons to vote. Since unfortunately, the Election Officer is not before me, and this aspect cannot be confirmed, however I take on record the opposition by the unregistered clubs to this factual position on behalf of DDCA.

28. Ordinarily, I would have preferred to pass a short judgment but in the facts of the present case, however, I have passed this detailed judgment inasmuch as I am finding that this issue of registered clubs only being entitled to participate and the unregistered clubs being not entitled to participate, is troubling the DDCA for the last about five or six years and the parties are unnecessarily embroiled in many litigations. It is my view that Sports Working Committees, and whose term is of just one year, should concentrate more on promoting of sports instead of being embroiled in litigations. Since this issue has repeatedly arisen I have passed this detailed judgment more so because it was only because of the interim orders of the learned single Judge of this Court dated 15.11.2011 that the unregistered clubs participated in the election process.

29. So far as the last argument on behalf of the DDCA is concerned that election process once commenced should not be stopped, is an argument which I really fail to understand because in the present case election process has not been stopped but in fact continued albeit with the unregistered clubs participating. Therefore, the judgments which were sought to be relied upon before me that the Court should not have stopped the election process really can have no application to the facts of the present case.

30. Finally I must add that most of the issues which have been decided by me, are such which have arisen during the state of the conduct of the elections, and actually such stands are missing either in the plaint or in the written statement of the respective parties, but counsel for the parties state that such issues be taken up and decided by me as these are mostly subsequent events after filing of the suits and therefore needs to be pronounced upon by this Court.

31. So far as the argument of DDCA of appeals being not maintainable without filing of certified copies of impugned order and which should be dismissed as time barred, in the peculiar facts of this case, and keeping in mind the fact that the object of a certified copy is to ensure accuracy of the order which is impugned and to add to the period of limitation the period taken for obtaining the certified copy, and since there is no doubt to the accuracy of the impugned order, and that the appeals being filed well within 90 days period of limitation, I allow the appellants to file the certified copies of the impugned order in this Court in 30 days and condone the delay in filing, especially as the appeals have been argued in detail.

32. The appellants have a *prima facie* case. The balance of

convenience is in their favour and they will be caused irreparable injury if the interim orders prayed for are not granted. Accordingly, appeals are accepted by confirming the interim orders of this Court directing the unregistered clubs to participate in the election process. The result of the election process and the successful candidates, who were directed by orders of this Court not to take charge, are now permitted to take charge and the election results will now operate.

33. The usual mantra which is necessary at the end of such judgments while dealing with issues under Order 39 Rule 1 & 2 CPC and which is that nothing contained in this order is a reflection on the final judgment to be passed by the lower court in accordance with law.

34. Appeals are allowed and disposed of accordingly. Parties are left to bear their own costs.

35. I must confess that I made repeated endeavours right from November, 2011 over different dates of hearing to bring about the parties to a common negotiating table. Endeavour was made to allow the election results to go on with the condition of the unregistered clubs being registered for the next elections, or giving the unregistered clubs certain time to get themselves registered and conduct of fresh elections and so on. Detailed

orders were passed on 27.1.2012 and 27.2.2012 in a very fond hope that the parties will settle the matter and details of which orders I am not reproducing herein, however, as is usual in all election disputes, all candidates, the voters and the opponents think that the subject election is the be all and end all, and therefore none of the parties have budged from their positions, and I have had to decide the appeals on merit.

36. In view of the judgment passed by me disposing of the appeals all interim orders will stand merged in the present judgment, except to the extent of orders which are required to be passed in CCP No.42/2012 and which is already coming up on 8.5.2012. Also, I clarify that if there is any dispute as to representation of a club, on account of inter se disputes in such clubs, it will be open to such parties to approach the Civil Court to obtain appropriate orders. All pending CMs stand disposed of in terms of this judgment.

VALMIKI J. MEHTA, J

APRIL 20, 2012
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